THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.24252 of 2005

Date: 23rd October, 2006

Between :-

M.Satyanarayana .. Petitioner

And

The Municipal Corporation of Karimnagar,
Rep. by its Commissioner,
Karimnagar District .. Respondent

THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.24252 of 2005

ORDER:-

1. Heard the Counsel on record.

2. W.V.M.P.No.1168/2006 is filed to vacate the interim order dated 14-11-2005 made in W.P.M.P.No.31158 of 2005 in W.P.No.24252 of 2005.

3. Inasmuch as a counter affidavit in detail had been filed, at the request of the Counsel representing the parties, the Writ Petition is being disposed of finally.

4. The Writ Petition is filed for a Writ of Mandamus declaring the action of the Commissioner, Municipal Corporation of Karimnagar – the respondent herein and issuing notice No.4593/E2/BW/2005, dated 20-10-2005 directing the petitioner to remove the bore-well and restore the road within 24 hours as null and void, arbitrary and violative of principles of natural justice and consequently declare the said notice as null and void and to pass such other suitable orders.

5. It is stated by the writ petitioner that the petitioner is the owner being in possession of house property bearing No.4-1-111, Annapurna Complex, Karimnagar and the petitioner purchased the said property from the

Government in the year 1980 and after purchasing the same, the petitioner obtained permission from the Municipality and constructed the house and at the time of construction of the house, the petitioner had left the place for set backs on four sides of the house. It is also stated that recently the petitioner had planned to dig a bore-well in the place where the petitioner left for set-backs at the time of construction of the house and accordingly, the petitioner had filed an application before the Municipal Commissioner, Karimnagar – the respondent herein on 27-6-2005 and the respondent herein in turn referred the matter to the Assistant Engineer, Municipal Corporation for verification. It is also further stated that the Assistant Engineer, Municipal Corporation without inspecting the site, on the advise of some unsocial elements and local leaders reported to the respondent that there is no open place is available for drilling a bore-well. It is also stated that in view of necessities for drinking water, the petitioner had dug a bore-well in the open space left for set-backs at the time of construction of the house. It is further stated that after the petitioner dug a bore-well, the press people and some unsocial elements demanded money from the petitioner and when the petitioner refused, they published in Vaarta local daily about the bore-well saying that the

petitioner drilled the bore-well in the middle of the road. It is also further stated that basing on the report published in the news item, the respondent without issuing any notice or conducting any enquiry, arbitrarily issued a notice No.4593/E2/BW/2005 dated 20-10-2005 directing the petitioner to remove the bore-well within 24 hours. It is also stated that if the bore-well is closed, the petitioner and his family members will suffer serious injustice and loss. Several other factual details also had been narrated.

6. In the counter affidavit filed in support of the vacate application, sworn to by the Incharge Commissioner of the respondent, several allegations had been denied. It is stated that the petitioner may be the owner of the house in question and the petitioner obtained permission from the Municipality but he had not left any set-backs and he had constructed shopping complex building in the entire plot without leaving any set backs on any side of the road but occupied 1' feet of 20' feet road on the southern side while constructing shopping complex. It is also stated that the petitioner made an application to dig a bore well by submitting a map and the respondent's office deputed Mr.Mahender, A.E., for inspection who reported that there is no place left as the petitioner constructed a shopping complex without leaving any set backs. Hence, the application was rejected on 30-7-2005. Specific stand

was taken that it is false to say that the Assistant Engineer on the advise of some unsocial elements reported that there is no place available. It is also specifically stated that even after rejecting the application for digging bore-well, the petitioner has drilled a bore-well in 20' C.C. road on the northern side of his building at a distance of 6' on road from his building. It is further stated that the petitioner fixed the submersible electrical pump to the bore and covered bore with cement place so that it will not appear to by-passers on the road as the public is passing over the bore-well. It is also further stated that the concerned office staff could not observe the laying of bore-well by the petitioner since it is covered with cement slab and levelled as road. It is also further stated that on 19-10-2005 there is a news item published in "Vaarta" daily about the digging of bore-well on the road and immediately the staff inspected the site and found that the petitioner drilled a bore-well in the road and covered it with cement slab to conceal the same and hence, the respondent issued a notice No.4593/E2/BW/2005 on 20-10-2005 directing the petitioner to remove the bore-well and restore the road within 24 hours after receiving the notice but the petitioner failed to comply with the notice and approached this Court by filing the present Writ Petition with false allegations.

7. These are the respective stands taken by the parties to the litigation.

8. The impugned notice dated 20-10-2005 reads as hereunder:-

> *"Sri M.Satyanarayana, R/o.H.No.4-1-111 has applied for permission for drilling of bore well in the premises of his house at Annapurna Complex, Karimnagar, vide the reference 1st cited above.*
>
> *After inspecting the site, the concerned Asst.Engineer of this Municipal Corporation, Karimnagar has reported that there is o open place is available at the proposed site for drilling of bore well, and hence his proposal was rejected.*
>
> *Inspite of this, he has drilled the bore-well illegally and also encroached the Corporation road causing damage to public road. The illegal drilling of bore well attracted the media and caused nuisance in public. And also you are voilated the AP WALTA rules by not taking permission for drilling of bore well.*
>
> *Therefore, Sri M.Satyanarayana is hereby issued notice to remove the bore well and restore the road iwthin 24 hours on pain of prosecution."*

9. The impugned notice refers to the application of M.Satyanarayana as reference No.1 and also news item published in Vartha daily District Edition dated 19-10-2005 as reference No.2. No doubt, certain factual details are

narrated in relation to the prior inspection by the concerned authorities in the counter affidavit filed in support of the Vacate Application. It is needless to say that as far as the impugned order is concerned, it doesn't refer to any issuance of prior notice before initiating this action. In view of the facts and circumstances, the impugned notice to be treated as show-cause notice and the writ petitioner is at liberty to raise his objections within a period of two weeks from the date of receipt of the order and the respondent – Municipal Corporation, Karimnagar, is at liberty to look into such objections and take an appropriate decision, if need be, by further inspecting the spot. Till a decision is taken on such objections, *status quo* as on today to be maintained. With the above directions, the Writ Petition is disposed of. no order as to costs.

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Justice P.S.Narayana

23rd October, 2006
smr